IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 3 of 2003

C IT JODHPUR
V/S
M/S ASHOK GUM INDUSTRIES

Mr. KK BISSA, for the appellant / petitioner

Mr. ANJAY KOTHARI, for the respondent

Date of Order : 23.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This appeal has been filed by the Revenue against the judgment of the Income Tax Appellate Tribunal dt. 29.7.2002, affirming the order of the Commissioner, Income Tax dt. 20.9.2001, who had partly allowed the appeal, and granted relief with respect to certain items.

This appeal was admitted vide order dt. 17.2.2003, a detailed speaking order, and by framing substantial questions of law, being as under:-

> "(1) Whether there was any material before the Tribunal to hold that the assessee had purchased loose gawar from Local Krishi Mandi and had applied 99 kgs. Gawar in each bag of one kilogram and thus has utilised 14706 bags of gawar bags?

(2) Whether the Tribunal was right in placing the burden of proving these facts on the revenue?"

We have gone through the order of the learned Assessing Officer, the Commissioner Income Tax, and that of the Income Tax Appellate Tribunal. The Assessing Officer has found the assessee liable for undisclosed the sale of 14706 bags of Bardana, calculating its price at Rs. 15/- per bag, and for that purpose it has been considered, that according to the audit report, and books of assessee, 14706 bags of Gwar were processed during the year, therefore, empty Bardana was available with the assessee, though in response to the quarry put to the assessee vide letter dt. 8.1.2001, it was stated, that each empty bag of Gwar is equal to 1 Kg. weight, and therefore the benefit of 1 Kg. per bag may be given. The Assessing Officer, after considering this explanation of the assessee, and verifying same from the ledger account found the explanation to be convincing, but then, the assessee could not show as to how the value of 14706 empty bags was considered in the trading results declared in the year. The learned Commissioner of Income Tax in appeal interfered with this order, and found, that the Assessing Officer was not justified in holding that 14706 bags were available in the closing stock, which the appellant had not shown, and making addition in respect thereof. It was observed, that the Assessing Officer had not brought on record any evidence, that Bardana received along with the Gwar was not utilized for the purpose of

sale of finished products, and that, the appellant had purchased loose Gwar from local Krishi Upaj Mandi, and had supplied 99 Kg. of Gwar in each bag of 1 Kg., and that, as per the books of accounts there were 1303 empty bags in balance, which were not shown in the closing stock, therefore, addition with respect to 1303 empty bags only was made, and rest was set aside. This finding has been affirmed by the learned Tribunal, by simply observing, that while working out this addition, the Assessing Officer has taken the bags as quintals, and therefore, the deletion was upheld.

During course of hearing, substantiating the question, the learned counsel for the Revenue submitted, that even according to the Assessee Gwar was purchased from Krishi Upaj Mandi in loose condition, and after processing it was sold, packed in gunny bags, each empty bag weighing 1 Kg., and containing 99 Kgs. Of goods, but then, the total gross weight, or the weight of the goods, and the weight of the bags etc. have to be reconciled, with the figures of the purchase of the Gwar, and sale of the processed Gwar, so also the gunny bags.

On the other hand, learned counsel for the assessee submitted, that the assessee has clearly explained the volume of Gwar purchased, and processed, and the volume sold, after being processed, by being packed in gunny bags,

each one weighing 1 Kg. containing 99 Kgs. of goods.

We have considered the submissions, and in our view, the things are not clearly reconcilable, inasmuch as if the total volume of Gwar purchased, is sold in gunny bags of 1 Kg., obviously the gross weight would exceed 14706 Kg., or if the assessee has sold each gunny bag together with volume of Gwar of 99 Kgs., then, he has to explain as to how the price of the bag received, or set off, or adjusted or discounted.

However, since these things are not clear, instead of going into the question of abstract theory of onus of proof, we think it appropriate to set aside this part of the order of the learned Commissioner, so also of the learned Income Tax Appellate Tribunal, and remit the matter back to the Commissioner, Income Tax (Appeals), with a direction to restore the appeal to its original number, and give both the parties appropriate and adequate opportunity to lead evidence, on the aspect involved, about the volume of Gwar purchased, and sold, together with number of gunny bags, and their weight, so as to find as to there has been any unexplained or undisclosed sale of gunny bags, or Gwar, and to decide the matter afresh.

The parties are directed to appear before the Commissioner, Income Tax (Appeals) on 20.12.2007.

For the present purposes the questions framed are accordingly answered, and appeal is allowed as above.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/sushil/